MONTANA LEGISLATIVE HISTORY

Chapter 198 1979

Bill H _____ S 137 Original bill & history ___C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 31	✓C	Hearing Date(s)	Jan 19	✓C
	Mar 05	✓C			C
		C			C
		C			C
Date Out	Mar 05	✓C		Jan 19	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 137

INTRODUCED BY S. Brown

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILATATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND LICENSED ADOPTION AGENCIES TO HAVE ACCESS TO NECESSARY BIRTH RECORDS; AMENDING SECTIONS 50-15-112 AND 50-15-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-15-112, MCA, is amended to read:

"50-15-112. Inspection of records and issuance of copies limited. (1) The department may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) "Tangible interest" includes but is not limited to the need of the department of social and rehabilitation services to have the information for the purposes of custody actions, social security eligibility determinations, or Indian tribal enrollment determinations."

Section 2. Section 50-15-206, MCA, is amended to read:

"50-15-206. Permissible disclosure of illegitimate birth. (1) Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only: ~~upon order of a court to determine personal or property rights. The information can be used only for that purpose.~~

(a) upon an order of a court to determine personal or property rights;

(b) upon request of the department of social and rehabilitation services or a licensed adoption agency for purposes of custody action, social security eligibility determinations, and Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority;

(d) upon request of an adopted person if of legal age.

(2) Prior to disclosure, the requesting party must submit in writing to the department the purpose for which the information is to be used. The information may be used only for that purpose."

-End-

SB 137
INTRODUCED BILL

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 19, 1979

The eleventh meeting of the Senate Judiciary Committee was called to order by Chairman Everett R. Lensink in room 331 at 10:00 a.m. on the above date.

ROLL CALL:

All members were present with the exception of Senator Mike Anderson, who was excused.

CONSIDERATION OF SENATE BILL 104:

Senator Brown explained that he introduced this bill at the request of the department of social and rehabilitation services and explained that this bill is an act to revise the rulemaking authority of the department. He explained that many federal laws change almost overnight and SRS must adapt their rules to conform to these new federal rules and regulations. He introduced Jon Meredith who is chief legal council for the department. Mr. Meredith gave a statement, copy of which is attached. Mr. Meredith further explained that they were not asking for legislature to create any more authority and said this type of legislation is extremely necessary.

There were no further proponents and no opponents to this bill.

Senator Brown stated that in subsection 5, page 6, he was concerned about a general grant of authority. He felt that there may be a problem with respect to future enactment of legislation.

Senator Van Valkenburg wondered if they really do need this authority. He felt it would appear to an outsider that it is, from the list of present situations, already being done. Mr. Meredith explained that arrangements had been made with the staff that was present before the present staff came, but no one on his staff has been there for longer than four months.

Additional questions were asked of Mr. Meredith and Senator Brown suggested that we hold the bill until they have an opportunity to work out some of these questions with SRS for any amendments they might need. Senator Lensink closed the hearing on this bill.

CONSIDERATION OF SENATE BILL 137:

Senator Brown explained about the long-standing problem the department of social and rehabilitation services had

in connection with licensed adoption agencies having access to necessary birth records. He introduced Norma Vestre, chief of social services bureau of SRS who gave a statement, copy attached. He also introduced Susan Pitts, from the department of health, records and statistics division, who gave a statement in support of this bill.

There were no further proponents and no opponents.

Senator Brown offered some amendments. Senator Turnage asked questions of Ms. Vestre and Ms. Pitts. Ms. Pitts felt that an awful lot of people get frightened in getting a court order. She stated that they have to furnish an affadavit that each person is a natural parent.

Senator Brown stated that he had to agree with Ms. Pitts. He felt that it was presumptious of the legislators to force people into court when they have a right of interest in that information. Ms. Pitts explained how the process works now. She stated that they are caught right in between now as they are not to disclose something that could be harmful to a person, but they also have to contend with the privacy act and the person's right to know.

Senator Brown offered the following amendments:

In the title, line 7, following "service", strike the work "and, and" and insert "," and also in line 8, following agencies, insert "a natural parent, or an adopted person," and on page 1, line 9, after the word "records", insert "in certain situations". These motions carried unanimously.

Senator Brown then moved on page 1, line 21, after the word "the" strike "need of the department of social and rehabilitation services to have the information" and insert "interest of the persons described in 50-15-206". He further moved on page 2, line 12 to strike "and" and insert "or" and on page 2, line 14, after the word "minority" to insert "unless the child has been placed for adoption."

The motions carried unanimously.

Senator Towe moved that the bill be amended on line 17, page 2, after the word "department", insert the new language, "proof of identity when appropriate; the need for the information, and" and on line 17 after "the" insert "specific" and to further amend on line 16, following "(2)", insert "Except when an order of the court is sought,". The motion carried unanimously.

Senator Brown moved that the bill do pass as amended. The motion carried unanimously.

Senator Towe moved to reconsider the action in this case. The motion carried unanimously.

There was considerable discussion about line 15, which reads "upon request of an adopted person if of legal age." Senator Towe moved to delete line 15 on page 2, and further moved to amend the bill on line 8 by striking ";" and inserting the new language "An adopted person of legal age may apply to the court for such an order.", following the word "rights".

Senator Brown stated emphatically that he thought a person of legal age has every right to find out about his legal birth and he did not feel that he should have to go to a court to exercise this right. He stated that he had an aversion to forcing people to go to court to find out that information when most courts will allow that information.

Senator Turnage summarized his thoughts on this matter and said he felt it made it much easier to embark on a search. He felt that the judge will usually allow a court order and that it should not cause too much expense.

Senator Brown summarized by stating that most adopted kids don't know what their rights are. To go pay a lawyer to find out what is in the file, he felt was unfair. He felt it was the right of that person to know.

Chairman Lensink called for a roll call vote and Senators Olson, Turnage, O'Hara, Galt and Towe voted yes, while Senators Lensink, Brown, Van Valkenburg and Healy voted no. The amendment offered by Senator Towe carried.

DISPOSITION OF SENATE BILL 137:

Senator Brown moved that the bill do pass as amended. The motion carried unanimously.

There being no further business, the meeting adjourned at 11:10 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Judiciary Committee

STANDING COMMITTEE REPORT

January 19, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 137

Respectfully report as follows: That Senate Bill No. 137,
introduced bill, be amended as follows:

1. Title, line 7.
Following: "SERVICES"
Strike: "AND"
Insert: ","

2. Title, line 8.
Following: "AGENCIES"
Insert: ", A NATURAL PARENT, OR AN ADOPTED PERSON"

3. Title, line 9.
Following: "RECORDS"
Insert: "IN CERTAIN SITUATIONS"

4. Page 1, lines 20 through 22.
Following: "to the"
Strike: "need of the department of social and rehabilitation services to have the information"

XXXPASS
Insert: "interests of the persons described in 50-15-206"

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

5. Page 2, line 8.
Following: "rights"
Strike: ";"
Insert: ". An adopted person of legal age may apply to the court for such an order."

6. Page 2, line 12.
Following: "determinations,"
Strike: "and"
Insert: "or"

7. Page 2, line 14.
Following: "minority"
Strike: ";"
Insert: "unless the child has been placed for adoption."

8. Page 2, line 15.
Strike: subsection (d) in its entirety

9. Page 2, line 16.
Following: "(2)"
Strike: "Prior"
Insert: "Except when an order of the court is sought, prior"

10. Page 2, line 17.
Following: "department"
Insert: ":
(a) proof of identity when appropriate;
(b) the need for the information; and
(c)"

11. Page 2, line 17.
Following: "department the"
Insert: "specific"

And, as so amended,
DO PASS

RA.

LENSINK, Chairman.

STATE PUB. CO.
Helena, Mont.

Planning a school to visit

SENATE Judiciary COMMITTEE

BILL 104 VISITORS' REGISTER DATE 1/24/

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Barnaby Johnson	Trust. Assn. of Counties	104	--	-
Kim Ritter	Senate Aide	104		
Margaret Kan	SRS	104	✓	
[illegible]	Assessment Section			
Susi Pitts	Dept of Health & Env. Sc, R+S Bureau	137	✓	
Norma Vestre	SRS	137	✓	
Jon Meredith	SRS	104	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE COMMITTEE JUDICIARY

Date January 19, 1979 Senate Bill No. 137 Time 11:05 A.M.

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)	✓	
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)	Excused	
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)	✓	
Brown, Steve (D)		✓
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)		✓

Secretary

Chairman

Motion: To delete line 15 on page 2, and on line 8 strike ";" and following word, "right" insert "An adopted person of legal age may apply to the court for such an order."

(include enough information on motion--put with yellow copy of committee report.)

Date 1/19/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)			
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)			✓
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
FRIDAY, JANUARY 19, 1979

SENATE BILL 137--"AN ACT TO EMPOWER THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO HAVE ACCESS TO NECESSARY BIRTH RECORDS"

SENATE BILL 137 WOULD ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND OTHER LICENSED ADOPTION AGENCIES TO HAVE ACCESS TO ALL BIRTH RECORDS TO VERIFY INFORMATION IT NEEDS FOR THE PURPOSES OF CUSTODY ACTIONS, SOCIAL SECURITY ELIGIBILITY DETERMINATIONS, OR INDIAN TRIBAL ENROLLMENT DETERMINATIONS.

IN THE PAST THERE HAVE BEEN PROBLEMS WITH THE EXCHANGE OF INFORMATION BETWEEN THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES. THIS BILL, WHICH HAS BEEN REVIEWED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES LEGAL STAFF, WOULD ALLOW THE DEPARTMENT OF HEALTH TO GIVE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES THE INFORMATION IT NEEDS IN ORDER TO PROVIDE SERVICES UNDER ITS PROGRAMS.

OUR INABILITY TO OBTAIN THESE RECORDS IN THE PAST HAS HAMPERED OUR EFFORTS TO PROVIDE SOME OF THE SERIVCES WE HAVE BEEN MANDATED TO GIVE. FOR INSTANCE, IN CUSTODY ACTIONS, WHEN WE GO TO COURT TO GAIN TEMPORARY CUSTODY OF A CHILD, WE NEED DOCUMENTED, FACTUAL INFORMATION ABOUT THE CHILD'S BIRTH DATE,

THE DEPARTMENT HAS OFTEN BEEN UNABLE TO GET THAT BIRTH CERTIFICATE. AT TIMES, WE HAVE RECEIVED ONLY SKETCHY INFORMATION FROM A MOTHER WHO THEN DISAPPEARS. OTHER TIMES, PARENTS DON'T REMEMBER THE EXACT DATE THE CHILD WAS BORN.

IN THE CASES OF SOCIAL SECURITY ELIGIBILITY DETERMINATIONS, OFTEN CHILDREN THAT HAVE BEEN ADOPTED ARE STILL ELIGIBLE FOR SOCIAL SECURITY BENEFITS SUCH AS DEATH BENEFITS FROM THEIR BIOLOGICAL PARENTS. ADOPTED CHILDREN CAN ALSO INHERIT FROM THEIR BIOLOGICAL PARENTS. BUT SRS MUST HAVE THE BIRTH CERTIFICATE TO PROVE THE CHILD IS ACTUALLY ELIGIBLE TO RECEIVE THOSE BENEFITS.

WE ALSO HAVE HAD INSTANCES WHERE BIRTH CERTIFICATES WERE NEEDED TO VERIFY THE PARENT'S ANCESTRY IN ORDER TO ENROLL A CHILD IN AN INDIAN TRIBE AT THE TIME OF HIS BIRTH. IN A RECENT SITUATION, WE WERE ATTEMPTING TO DETERMINE WHETHER A 17-YEAR-OLD BOY WITH A STRAIGHT-A GRADE AVERAGE HAD BEEN ENROLLED WHEN HE WAS BORN IN ORDER FOR HIM TO RECEIVE BENEFITS TO SEND HIM TO COLLEGE. HIS ADOPTED PARENTS WERE RETIRED AND COULD NOT AFFORD TO PAY FOR HIS COLLEGE EDUCATION. THE BUREAU OF INDIAN AFFAIRS INDICATED HE HAD NOT BEEN ENROLLED, BUT IF HE HAD BEEN ABLE TO OBTAIN THE BIRTH CERTIFICATE IT WOULD HAVE PROVEN THAT THE BOY HAD BEEN BORN TO AN ENROLLED TRIBE MEMBER. WE HAVE SINCE LEARNED THAT THE BOY IS ELIGIBLE TO BE ENROLLED AND COULD RECEIVE BENEFITS TO GO TO COLLEGE IF THE TRIBE COULD OBTAIN PROOF OF THE CHILD'S INDIAN PARENTAGE. THAT CAN ONLY BE PROVEN THROUGH THE BIRTH CERTIFICATE.

OTHER LICENSED ADOPTION AGENCIES HAVE SIMILIAR NEEDS AND ALSO REQUIRE ACCESS TO THESE RECORDS.

THIS BILL WILL NOT THREATEN THE PRIVACY OF ADOPTIVE PARENTS OR THEIR CHILDREN BEFORE THE CHILDREN REACH THE AGE OF MAJORITY. IT ALLOWS FOR THE NATURAL PARENT TO OBTAIN A COPY OF THE BIRTH CERTIFICATE ONLY IF NO ADOPTION HAS TAKEN PLACE. AT THE SAME TIME, IT RECOGNIZES THE ADOPTED CHILD'S RIGHTS TO TRACE HIS OR HER FAMILY HISTORY WHEN OF LEGAL AGE.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 31, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Wednesday, January 31. All members were present except Representative Eudaily, excused, because he was in the hospital. Bills scheduled for hearing were House Bills 422, 424 and Senate Bill 137.

HOUSE BILL NO. 424: Representative Yardley. This bill will revise the television district laws. It would permit the creation, alteration, or dissolution of a district by the residents. It would also change the interest limits on warrants and bonds, and eliminate the requirements related to ownership of television sets. The method of taxing the district would be created by petition. He explained how trustees are determined if more than one county is involved. He went through the bill and listed the changes, and commented that some of them were merely housekeeping.

ROSS WEBB: Livingston. We are in the process of forming a television district. We now have the opportunity to make it county-wide with UHF stations, for the Livingston area and up the valley. We find that we will have to go to a television tax district in order to finance and control it. We found a few irregularities in the tax laws that Mr. Yardley has pointed out. We have 2800 cable subscribers in Livingston at the present time, but this would cover a wider area than the cable.

REPRESENTATIVE KEEDY: He questioned the new language on page 5 and discussion followed to determine exactly what was meant. Then discussion was held concerning owners and residents.

Representative Yardley made the comment that 51% of the registered voters were on the petition. Owners now receiving the service can sign an affidavit

There were no other questions and no further discussion and the hearing closed on House Bill Number 424.

SENATE BILL NO. 137: Senator S. Brown. This bill was at the request of the SRS office. It attempts to expand necessary birth certificate information. This would be for various reasons, such as purposes of custody actions, social security eligibility, or upon the request of the SRS by order of the court, or during the childs minority unless the child has been placed for adoption You may have heard about a debate in the Senate that is no longer in the bill. Subsection 2 makes it clear that the information can only be released if the specific purpose for which the information is to be used and the information may be used only for that purpose. There must be some need shown for the request before it is released.

NORMA VESTRE, SRS: This bill would allow the department and other adoption agencies to have custody action. There have been problems in the past between the Department of SRS and the Department of Health, which have caused delays in the custody action. You need a birth certificate to receive social securi She gave reasons for the need for access of the records only when an adoption has taken place. She explained the uses and the safeguards that would be taken.

REPRESENTATIVE KEEDY: On page 2, line 10, the new language, it could not be a foster child. Miss Vestre said the birth certificate is sealed upon adoption. She discussed this further.

There were no other questions, and no further discussion and the hearing closed on Senate Bill Number 137.

HOUSE BILL NO. 422: Representative Lory. The purpose of the bill is to circumvent some of the illicit labs that are making drugs. The mere possession of these is presumed the intent to manufacture. He went through the bill and explained the exemptions and the reasons for them. He discussed the types of drugs that are being made, such as goof balls, speed, angel dust and said the PCP is the worst one and it is easily manufactured.

TOM HONZEL: County Attorneys Association. This bill was drafted because of the problems the county attorneys have encountered, just recently with these home labs. We worked with Arnold Melecoff from the state lab in Missoula. He went on to explain what was done and the reasons. There are several other states that have similar legislation. We have encountered the problem only in recent years.

MARK ROSCOE: Prosecuting Services, Attorney Generals Office. I assist the county attorneys at their request. We had a case in Musselshell County last year in which they were manufacturing drugs in an old warehouse. He explained how they manufacture drugs in home labs. The people in the lab said they were from Union Carbide but very few people from Union Carbide work in a broken-down lab in Mussellshell, Montana. There are adequate protections for anybody legitimately involved. There is an additional protection. In order to prosecute the state will have to prove the case.

REPRESENTATIVE LORY: The federal register in March, 1977 put only the two immediate starters. We have come further in our bill.

REPRESENTATIVE HOLMES: How do you prove intent to sell. Representative Lory said, by the amount.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 5, 1979

Following the regular meeting the committee went into executive session in room 436 of the Capitol Building at 10:00 a.m. Monday, March 5. All members were present except Representatives Pavlovich, Seifert, Keedy, Uhde, and Chairman Scully. Representative Teague chaired the meeting until Representative Scully came back from carrying a bill in the Senate. Representative Uhde came in later also.

SENATE BILL NO. 88: Representative Anderson moved "be concurred in". After lengthy discussion it was decide to pass for the day, in order to get more information.

SENATE BILL NO. 104: Representative Holmes moved "be concurred in". The motion carried with the vote unanimous. Representative Rosenthal will carry the bill on the floor.

SENATE BILL NO. 120: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Kemmis moved that it be placed on the consent calendar. The motion carried with the vote unanimous.

SENATE BILL NO.137: Representative Roth moved "be concurred in". The motion carried with the vote unanimous. Representative Roth will carry on the floor.

SENATE BILL NO. 149: Representative Keyser moved "be concurred in". After much discussion whether this was covered in the bill revising election laws, Representative Keyser withdrew his motion. It was decided to pass for the day and Representative Eudaily will check to see if it is covered in the other bill

SENATE BILL NO. 152: Representative Eudaily moved to amend line 24, page 2 by reinserting "justify, or". The motion carried with the vote unanimous.

Representative Holmes moved to amend line 6 of page 4, following line 6, insert: "and must be made within 10 days of the referee's recommendation". The motion carried with the vote unanimous.

Representative Lory moved to strike, "refere and insert, "departments" on line 11, page 4 The motion carried with the vote unanimous.

Representative Lory moved to amend on page 4 line 22 by striking "referee's written" and inserting, "departments". The motion carried with the vote unanim

SENATE BILL NO. 137

INTRODUCED BY S. BROWN

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, AND LICENSED ADOPTION AGENCIES, A NATURAL PARENT, OR AN ADOPTED PERSON TO HAVE ACCESS TO NECESSARY BIRTH RECORDS IN CERTAIN SITUATIONS; AMENDING SECTIONS 50-15-112 AND 50-15-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-15-112, MCA, is amended to read:

"50-15-112. Inspection of records and issuance of copies limited. (1) The department may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) "Tangible interest" includes but is not limited to the ~~need of the department of social and rehabilitation services to have the information~~ INTERESTS OF THE PERSONS DESCRIBED IN 50-15-206 for the purposes of custody actions, social security eligibility determinations, or Indian tribal enrollment determinations."

Section 2. Section 50-15-206, MCA, is amended to read:

"50-15-206. Permissible disclosure of illegitimate birth. (1) Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only: ~~upon order of a court to determine personal or property rights. The information can be used only for that purpose.~~

(a) upon an order of a court to determine personal or property rights, AN ADOPTED PERSON OF LEGAL AGE MAY APPLY TO THE COURT FOR SUCH AN ORDER.

(b) upon request of the department of social and rehabilitation services or a licensed adoption agency for purposes of custody action, social security eligibility determinations, and OR Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority; UNLESS THE CHILD HAS BEEN PLACED FOR ADOPTION.

~~(d) upon request of an adopted person if of legal age.~~

(2) Prior EXCEPT WHEN AN ORDER OF THE COURT IS SOUGHT, PRIOR to disclosure, the requesting party must submit in writing to the department:

(A) PROOF OF IDENTITY WHEN APPROPRIATE;

(B) THE NEED FOR THE INFORMATION; AND

REFERENCE BILL

(C) the SPECIFIC purpose for which the information is to be used. The information may be used only for that purpose."

-End-